IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5508 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC VAHAN VYAVAHAR BHAVAN

Versus

KHENGARBHAI U SHENDHAV C/O KIRIT C SHAH

Appearance:

MR HARDIK C RAWAL for Petitioner

MR MUKUL SINHA for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 27/07/2000

ORAL JUDGEMENT

Heard Mr. H.C. Rawal, learned counsel for the petitioner GSRTC and Mr. Mukul Sinha, learned counsel for the respondent.

2. The respondent Khengarbhai U. Shendhav was working as conductor with the petitioner GSRTC. While on duty, during surprise check it was found that inspite of realising ticket value he has not issued tickets to the passengers. It is alleged that previously also the respondent was cautioned and warned for such misconduct and he was even dismissed from service, but was subsequently reinstated. Because of this misconduct for not issuing tickets charge sheet has been framed and departmental proceedings have been initiated against the respondent. In the departmental proceeding the Inquiry Officer after taking evidence and perusing relevant papers found that the charges framed against respondent have been proved. Disciplinary authority considered the report of the Inquiry Officer and after hearing respondent, disciplinary authority decided that respondent is not fit to be retained in service, and accordingly the respondent was dismissed from service by order dated 25-7-1997.Thereafter the respondent had taken up the matter with the appropriate authority in the Government, which referred the dispute to the Labour Court, Ahmedabad, which has registered his case as Reference (LCA) No. 1390 of 1997. Labour Court after taking evidence and hearing the parties quashed the order of dismissal of the respondent, and directed the Corporation to reinstate him in the post. However, Labour Court has stopped three annual increments of the respondent with permanent effect. Having felt aggrieved by the order of the Labour Court, petitioner Corporation has filed present petition for quashing judgment & award passed by the Labour Court, Ahmedabad on 4-5-1999.

3. Mr. Rawal, learned counsel appearing on behalf of the petitioner Corporation submitted that the respondent had realised ticket fare from two passengers but he has not issued tickets to them of lower denomination, and thereby he has misappropriated public money. Mr. Rawal submitted that earlier also the respondent was warned and cautioned by the Corporation for such misconducts and he was also dismissed from service but subsequently reinstated. Mr. Rawal accordingly submitted that the respondent is indulging in misappropriation of public money and therefore he is not fit to be retained in service. Therefore the Labour Court should not have taken a lenient view in the matter of punishment by imposing only withholding of three increments. Learned counsel further submitted that, in the present facts & circumstances of the case and having due regard to the past conduct of the respondent, Labour Court should not have interfered with the penalty imposed by the disciplinary authority. Mr. Rawal accordingly

submitted that the Labour Court exercised jurisdiction not vested in it, and therefore the judgment & award passed by the Labour Court deserve to be dismissed.

4. Mr. Mukul Sinha, learned counsel appearing on behalf of the respondent submitted that, in the present case the allegation of the Corporation is that the respondent has taken four rupees less than the actual fare from two passengers; and for this minor offence penalty of dismissal from service is disproportionate, and therefore the Labour Court has rightly taken a lenient view instead of dismissal, passed order for withholding three increments.

5. I have considered submissions of learned counsel of both the parties. It appears that, on previous ten occasions the respondent was cautioned and warned by the Corporation for his different misconducts, which includes misappropriation of money. It is also not denied that earlier the petitioner was dismissed from service, but subsequently reinstated by the Corporation. Having regard to the past conducts of the respondent, I am of the view that the Labour Court has taken a too liberal view in the matter of penalty. However, I do not like to interfere with the order of reinstatement. So far withholding of increment is concerned, I am of the view that withholding of Five increments with cumulative effect will meet the ends of justice. Accordingly the judgment & award of the Labour Court dated 4-5-1999 is modified to the extent that, instead of withholding three increments, five yearly increments of the respondent be withheld with cumulative effect. With the aforesaid modification in the award, this petition is allowed in part. Rule made absolute to the aforesaid extent. I make no order as to costs.

Dt: 27-7-2000

(P.K. Sarkar, J)

/vgn.